

CONTENT

[Our Comments](#)

[Background](#)

[- No enforcement of re-entry or forfeiture for non-payment of rent](#)

[- Northern Ireland and Scotland](#)

[Contact](#)

“a landlord’s other remedies are not affected by section 82”

OUR COMMENTS ON THE NEW PROTECTIVE MEASURES FOR BUSINESS TENANTS

The wide definition of “Relevant Business Tenancy” in the Coronavirus Act 2020 (the ‘Act’) means that business tenancies to which Part 2 of the Landlord and Tenant Act 1954 applies will be covered by the protective measures contained in section 82 of the Act. This may also cover situations where the parties have contracted out of the security of tenure available under the Landlord and Tenant Act 1954.

Certain circumstances are not covered by section 82, including licenses to occupy, tenancy at will, and certain tenancies expressly excluded from Part 2 of the Landlord and Tenant Act 1954 (e.g. tenancies of less than six months).

The initial announcement by HM Government related to protective measures for business tenants who would be unable to afford their respective rents. However, section 82 of the Act contains no provisions requiring that rent cannot be afforded by the business tenant. Rather, it simply states that “[a] right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent, may not be enforced, by action or otherwise, during the relevant period”. Accordingly, it would seem that also businesses that can afford to pay their rents may make use of the protection during the Relevant Period.

The Relevant Period is at this time the period from 26 March 2020 until 30 June 2020. The Relevant Period may be extended to such later date as may be specified by the relevant national authority in regulations made by statutory instrument, and that power may be exercised on more than one occasion so as to further extend the Relevant Period.

During the Relevant Period, no conduct by or on behalf of a landlord, other than giving an express waiver in writing, is to be regarded as waiving a right of reentry or forfeiture, under a relevant business tenancy, for non-payment of rent. However, it should be noted that section 82 of the Act protects against enforcement of re-entry or forfeiture for non-payment of rent. It does not result in business tenants receiving a rent-free period and rent for the Relevant Period will need to be paid by the business tenant at some point.

Similarly, a landlord’s other remedies are not affected by section 82. This means, for example, that the landlord can take rent from any deposit, exercise Commercial Rent Arrears Recovery (CRAR) which allows landlords to seize a tenant’s goods from the premises in order to recover unpaid rent, claim interest on rents due, and/or begin an insolvency process against the tenant by serving a statutory demand. A tenant should therefore take into consideration all these remedies before a decision is made to stop paying rent.

BACKGROUND

On 25 March 2020, emergency legislation in the form of the Coronavirus Act 2020 (“the Act”) was given royal assent. The Act covers a broad range of measures taken by HM Government in relation to a broad range of topics as businesses and the general public are impacted by the coronavirus, COVID-19.

No enforcement of re-entry or forfeiture for non-payment of rent

Under section 82 of the Act, a right of re-entry or forfeiture, under a Relevant Business Tenancy, for nonpayment of rent may not be enforced, by action or otherwise, during the Relevant Period. This covers any sum a tenant is liable to pay under a relevant business tenancy.

“Relevant Business Tenancy” means any tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies or any tenancy to which Part 2 of the Landlord and Tenant Act 1954 would apply if any relevant occupier were the tenant.

Furthermore, in accordance with the Act, any order made by the High Court during the relevant period to the effect that possession of the property comprised in the relevant business tenancy is to be given to the landlord must ensure that the tenant does not have to give possession of the property to the landlord before the end of the Relevant Period.

Other remedies such as CRAR and debt claims remain available to commercial landlords, although frozen court proceedings due to the COVID-19 outbreak would likely make these difficult forms of recourse.

Northern Ireland and Scotland

A comparable provision for Northern Ireland is found in Section 83 of the Act.

In Scotland, the Coronavirus (Scotland) Act 2020 (ScotCoVAct) has come into force on 7 April 2020 and focusses primarily on residential tenancies rather than commercial tenancies. Furthermore, the protective measures for business tenants contained in section 82 of the Act do not apply in Scotland. However, the ScotCoVAct extends the period before eviction under commercial leases can take place to 14 weeks (previously 14 days) and applies irrespective of whether a notice has already been served (provided the

14 day period has not already expired) and irrespective of whether the circumstance which would entitle the landlord to terminate the lease already exist.

GET IN TOUCH

Should you have any questions to the topics covered in this article, please get in touch with your usual Rooney Nimmo contact or any of the persons below.

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